

Letter of Findings: 18-20130343
Financial Institutions Tax
For the Years 1999 through 2007

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ISSUE

I. Notice of Federal Modification – Financial Institutions Tax.

Authority: IC § 6-5.5-6-6; IC § 6-5.5-6-6(a); IC § 6-5.5-6-6(b); IC § 6-8.1-9-1; Whitney v. U.S., 826 F.2d 896 (9th Cir. 1987); Salin Bancshares, Inc. v. Indiana Dept. of Revenue 744 N.E.2d 588 (Ind. Tax Ct. 2000); Letter of Findings 99-0318 (April 28, 2000); Letter of Findings 90-0359 (August 25, 1992); Letter of Findings 90-0324 (April 19, 1991).

Taxpayer challenges the Department of Revenue's Decision denying a refund request based upon a Revenue Agent Report (RAR).

STATEMENT OF FACTS

The amount of Taxpayer's federal adjusted gross income tax was adjusted by the Internal Revenue Service. Taxpayer received a Federal Form 870-AD. The IRS "accepted" and signed the 870-AD form on November 26, 2012. Taxpayer thereafter submitted an amended 2004 Financial Institutions Tax (FIT) return requesting a refund of FIT attributable to the federal RAR adjustment. The Department of Revenue ("Department") rejected the amended FIT return on the ground that the refund request was untimely. Taxpayer protested and an administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

ISSUE

The Form 870-AD is an "Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment." Taxpayer's form is dated November 26, 2012. The Department rejected the return as untimely effectively denying the associated refund.

Taxpayer disagrees stating that it timely filed its amended FIT return January 25, 2013:

The aforementioned return was filed pursuant to a modification by the Internal Revenue Service . . . which resulted in a reduction of the tax legally due to the state of Indiana. The return was filed within 180 days of the date that the taxpayer was notified of the modification (Form 870-AD dated 11-26-12.)

Taxpayer cites as authority IC § 6-8.1-9-1 for its argument that the Department was timely notified of the federal adjustment. The provision on which Taxpayer relies requires that a taxpayer file a claim for refund with the Department within six months after the taxpayer is notified of a federal adjustment. However, Taxpayer's reliance on this particular provision is misplaced. The provision on which Taxpayer relies is a general provision governing adjusted gross income taxes. Taxpayer is seeking a refund of Financial Institution Tax which contains a specific statutory provision applicable to the FIT.

The FIT notification requirement is found at IC § 6-5.5-6-6 which provides as follows:

(a) Each taxpayer shall notify the department in writing of any alteration or modification of a federal income tax return filed with the United States Internal Revenue Service for a taxable year that begins after December 31, 1988, including any modification or alteration in the amount of tax, regardless of whether the modification or assessment results from an assessment.

(b) The taxpayer shall file the notice in the form required by the department within one hundred twenty (120) days after the alteration or modification is made by the taxpayer or finally determined, whichever occurs first.

(c) The taxpayer shall pay an additional tax or penalty due under this article upon notice or demand from the department.

The Indiana Tax Court reviewed the notification requirement set out in IC § 6-5.5-6-6 and noted that, "[T]he General Assembly clearly intended to place a duty upon taxpayers to notify the Department of 'any alteration or modification' to their federal income tax returns." Salin Bancshares, Inc. v. Indiana Dept. of Revenue 744 N.E.2d 588, 593 (Ind. Tax Ct. 2000). "[T]he language chosen by the legislature is broad in scope. It does not limit the alterations or modifications to only those actually applied to a taxpayer's income tax return or to those marked on an amended return. The alterations or modifications that must be reported include 'any' change 'in the amount of tax,' regardless of the source of the change." Id.

The law required Taxpayer to "notify the department in writing of any alteration or modification of a federal income tax return filed with the United State Internal Revenue Service . . . including any modification or alteration in the amount of tax regardless of whether the modification or assessment results from an assessment." IC § 6-5.5-6-6(a).

Accompanying Taxpayer's Federal Form 870-AD, were various copies of IRS Form 4549-A labeled "Internal

Revenue Service Income Tax Examination Changes" dated either March 4, 2008, or July 11, 2011. Regardless of which particular 4549-A triggered the specific adjustment here at issue, Taxpayer was required to notify the Department of those adjustments within 120 days after it received notice of the adjustments set out in the 4549-A forms. As explained in IC § 6-5.5-6-6(b), Taxpayer is required to notify the Department "within one hundred twenty (120) days after the alteration or modification is made by the taxpayer or finally determined, whichever occurs first." (Emphasis added). In this particular case, the 2008 and 2011 4549-A forms "occurred" first.

Taxpayer received 4549-A notices of adjustments dated 2008 and 2011 but failed to provide the requisite notice to the Department within 120 days after the adjustments were made.

It is Taxpayer's contention that the Form 870-AD marked the date on which the federal modifications were "finalized" and that it marked the date – for Indiana purposes – on which Taxpayer was first required to provide notice to Indiana. However, the formal signing of IRS Form 870-AD "Offer of Waiver of Restrictions on Assessment and Collection Deficiency in Tax and of Acceptance of Overassessment" does not, standing alone, preclude any taxpayer from later seeking a refund. The Form 870-AD is not necessarily the "final word" on the issues addressed. *Whitney v. U.S.*, 826 F.2d 896 (9th Cir. 1987). Therefore, signing the Form 870-AD, may not necessarily preclude the taxpayer from seeking relief by means of an alternative and subsequent "final" federal determination.

The Department's position is long held. For example, in Letter of Findings 90-0359 (August 25, 1992), the Department held that, "The taxpayer is not permitted to ignore reporting RAR adjustments to the Department even if they are under protest, but must file the adjustments within the time constrains of [IC 6-3-4-6\(b\)](#)." See also Letter of Findings 90-0324 (April 19, 1991); Letter of Findings 99-0318 (April 28, 2000) (Under [45 IAC 3.1-1-94](#), "The 120 days does not mean '120 days after the issuance of a final assessment' but 'after a modification of a federal income tax liability.'").

At a minimum, Taxpayer was required to notify the Department within 120 days of the adjustments contained within the IRS Forms 4549-A. It failed to do so and is now precluded from seeking or obtaining the refund associated with those adjustments.

FINDING

Taxpayer's protest is respectfully denied.

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